



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150-AJ04

[NRC-2011-0213]

**Export and Import of Nuclear Equipment and Material;
Export of International Atomic Energy Agency Safeguards Samples**

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations pertaining to the export and import of nuclear materials and equipment. This rulemaking is necessary to reflect the nuclear non-proliferation policy of the Executive Branch regarding U.S. Government obligations to the International Atomic Energy Agency (IAEA). Also, this final rule makes certain editorial revisions, and corrects typographical errors.

DATES: The final rule is effective **[Insert date that is 30 days after the date of publication in the *Federal Register*]**.

ADDRESSES: Please refer to Docket ID NRC-2011-0213 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rulemaking, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0213.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may access publicly available documents online in the NRC Library at

<http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Brooke G. Smith, Senior International Policy Analyst, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone: 301-415-2347, e-mail: Brooke.Smith@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

One purpose of this final rule is to conform the NRC's export and import regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 110, "Export and Import of Nuclear Equipment and Material," to current nuclear non-proliferation policies of the Executive Branch. The NRC is amending § 110.11 to facilitate implementation of the *Protocol Additional to the*

Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (Additional Protocol) to expand the exemption from the requirements for a license to include exports of source and byproduct material in IAEA safeguards samples. This final rule also makes certain editorial revisions, and corrects typographical errors.

The NRC staff has determined that these changes are consistent with current U.S. policy, and will pose no unreasonable risk to the public health and safety or to the common defense and security of the United States.

Because this rule involves a foreign affairs function of the United States, the notice and comment provisions of the Administrative Procedure Act do not apply (5 U.S.C. 553(a)(1)). In addition, solicitation of public comments would delay the U.S. conformance with its international obligations, and would be contrary to the public interest (5 U.S.C. 553(b)). The final rule is effective **[Insert date that is 30 days after the date of publication in the *Federal Register*]**.

Section by Section Analysis

Section 110.11, Export of IAEA safeguards samples. The NRC is amending § 110.11 to facilitate implementation of the Additional Protocol and the *Agreement between the United States and the International Atomic Energy Agency for the Application of Safeguards in the United States* to expand the exemption to include exports of source and byproduct material in IAEA safeguards samples. For source material, samples may not exceed 5 kilograms per facility per year and for byproduct material, quantities may not exceed the values listed in § 30.71 per shipment.

Section 110.22, General license for the export of source material. This rule corrects an internal reference error in paragraph (b) so that the reference is to paragraph (e) of the section instead of to paragraph (f).

Section 110.27, General license for import. This rule amends § 110.27(a) to make clear the intent of the 2010 rule change to this section (75 FR 44072; July 28, 2010). If the byproduct, source, or special nuclear material is exempt from NRC or Agreement State licensing requirements, then that material is exempt from requiring an import license.

Section 110.54, Reporting requirements. This section is amended to clarify that the reports required in paragraph (c) should be addressed to the Deputy Director, Office of International Programs, in accordance with § 110.4.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal Agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This final rule does not constitute the establishment of a standard for which the use of a voluntary consensus standard would be applicable.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the rule.

Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.). Existing requirements were approved by the Office of Management and Budget (OMB) under approval number 3150-0036.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

This rulemaking is necessary to reflect the nuclear non-proliferation policy of the Executive Branch including U.S. Government reporting obligations to the IAEA. This final rule is expected to have no changes in the information collection burden or cost to the public.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule affects only companies exporting nuclear equipment and material to and from the United States and they do not fall within the scope of the definition of “small

entities” set forth in the Regulatory Flexibility Act (5 U.S.C. 601(3)), or the Size Standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR Chapter I.

Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 110.

PART 110 -- EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. Revise the authority citation for part 110 to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 223, 234 (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841; Solar, Wind, Waste, and Geothermal Power Act of 1990 sec. 5 (42 U.S.C. 2243); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, 119 Stat. 594.

Sections 110.1(b)(2) and 110.1(b)(3) also issued under 22 U.S.C. 2403. Section 110.11 also issued under Atomic Energy Act secs. 54(c), 57(d), 122 (42 U.S.C. 2074, 2152). Section 110.50(b)(3) also issued under Atomic Energy Act sec. 123 (42 U.S.C. 2153). Section 110.51 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 110.52 also issued

under Atomic Energy Act sec. 186, (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under Intelligence Authorization Act sec. 903 (42 U.S.C. 2151 *et seq.*).

2. Revise § 110.11 to read as follows:

§ 110.11 Export of IAEA safeguards samples.

(a) A person is exempt from the requirements for a license to export special nuclear, source, and byproduct material set forth in sections 53, 54d, 64, 81 and 82 of the Atomic Energy Act and from the regulations in this part to the extent that the person exports special nuclear, source, or byproduct material in IAEA safeguards samples. The samples must be exported in accordance with § 75.8 of this chapter, or a comparable U.S. Department of Energy order, and:

(1) For special nuclear material, be in quantities not exceeding a combined total of 100 grams of contained plutonium, uranium-233, and uranium-235 per facility per year;

(2) For source material, be in quantities not exceeding 5 kilograms per facility per year;
and

(3) For byproduct material, be in quantities not exceeding the values in § 30.71 of this chapter per shipment.

(b) This exemption does not relieve any person from complying with parts 71 or 73 of this chapter or any Commission order under section 201(a) of the Energy Reorganization Act of 1974 (42 U.S.C. 5841(a)).

3. In § 110.22, revise paragraph (b) to read as follows:

§ 110.22 General license for the export of source material.

* * * * *

(b) Except as provided in paragraph (e) of this section, a general license is issued to any person to export uranium or thorium, other than uranium-230, uranium-232, thorium-227, or thorium-228, in individual shipments of 10 kilograms or less to any country not listed in § 110.28 or § 110.29, not to exceed 1,000 kilograms per calendar year to any one country or 500 kilograms per calendar year to any one country when the uranium or thorium is Canadian-obligated.

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4. In § 110.27, revise paragraph (a) to read as follows:

§ 110.27 General license for import.

(a) Except as provided in paragraphs (b) and (c) of this section, a general license is issued to any person to import byproduct, source, or special nuclear material if the U.S. consignee is authorized to receive and possess the material under the relevant NRC or Agreement State regulations.

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5. In § 110.54, revise the introductory text of paragraph (c) to read as follows:

§ 110.54 Reporting requirements.

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(c) Persons making exports under the general license established by § 110.26(a) shall submit by February 1 of each year one copy of a report of all components shipped during the previous calendar year. This report shall be submitted to the Deputy Director, Office of International Programs at the address provided in § 110.4. This report must include:

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Dated at Rockville, Maryland, this 13th day of April 2012.

For the Nuclear Regulatory Commission.

R.W. Borchardt,
Executive Director for Operations.

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